

Response
U.S. Patent Application No. 09/977,243

REMARKS

Claims 1, 2, 3, 5, 9, 19, 22, 25, 26, 31, 32, 34, 43, 47, and 63-65 have been amended in clarification. Claims 10-18, 20, 27, 29, 30, 42, 53, 56 and 66 have been canceled. Accordingly, claims 1-9, 19, 21-26, 28, 31-41, 43-52, 54-55 and 57-65 are currently pending. Reconsideration of the application in its amended form is respectfully requested.

Rejection of Claims under 35 USC §112

Claims 1, 10, 22, 31 were rejected as failing to comply with the written description requirement. Specifically, the Examiner objected to use of the term “fixedly” with respect to the claimed toolbar.

The term “fixedly” was previously deleted from claims 1, 10, 22 and 31 by the after-final response dated September 26, 2008. The Advisory Action mailed October 8, 2008 indicated that these amendments would, for the purposes of appeal, be entered. Subsequent to the Advisory Action, an Appeal was filed on December 18, 2008 and thus, the September 26, 2008 should have been entered. Accordingly, it appears that these written description rejections have already been overcome and/or rendered moot.

Claim 64 was also rejected as failing to comply with the written description requirement. Claim 64 depends from claim 22, and recites that “the second activity is a gaming activity.” It is acknowledged in the Office Action that the specification discloses that games may be played on the device. However, the Examiner asserts that the games have not been disclosed in such a manner wherein the game is made available or unavailable and dependent on the selection of the first activity. Applicant respectfully disagrees. In addition, it appears that claim 22 has been

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misinterpreted, given that it is the second characteristic of the selected interactive tool associated with the icon on the toolbar that is made available or unavailable.

Applicant has amended claim 22 in clarification. Specifically, claim 22 recites “the second characteristic being activated upon retrieving the second activity application from the removable read-only memory cartridge, and inactivated upon retrieving the first activity application.”

Whether the characteristic is activated or inactivated is dependent on the selected activity, wherein the tool functionality is calibrated to the selected activity, as explained in the specification:

If it is determined at step 408 that one of activities 510, 520, 530, 540 has been selected from activity menu 500, then the selected activity is launched at step 414. In general, the particular activity that is selected may dictate that a particular tool set functionality is required. For example, some tools may be appropriate for a drawing activity, but not appropriate for a gaming activity. This calibration of tool functionality to the selected activity is accomplished at step 416, where hand-held electronic toy 100 sets the functionality of tools associated with icons 201-209.

See Specification, page 7, ¶ 33 & page 8, ¶ 36. Accordingly, Applicant submits that the language of claim 64 is fully supported by the specification. Withdrawal of the rejection of claim 64 based on Section 112, first paragraph is respectfully requested.

It was also asserted that there is insufficient antecedent basis for the limitation “said plurality of activities” in claim 1. Applicant has amended claim 1 in response thereto, which now recites “a first interactive tool from the plurality of interactive tools enabling the selection of

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one of a plurality of drawing activities displayed on the touch-screen display in response to one of said plurality of drawing activities displayed on the touch-screen display being touched.”

Accordingly, Applicant submits that this rejection is now moot.

Rejection of Claims under 35 USC §103

Claims 1-19, 21-28, 31-41, 43-55 and 57-66 were rejected as being obvious over U.S. Patent Publication No. 2001/0038999 to Hainey, II (“*Hainey*”) in view of Microsoft Office Shortcut bar and Microsoft Paint (copyright 1981-1988 version 4) and further in view of SAMS Teach Yourself Paint Shop Pro 5, Michael T. Clark. Applicant respectfully traverses all rejections.

However, in an effort to expedite prosecution, Applicant has amended independent claims 1, 19, 22, 26, 31, 32 and 43 in clarification and in light of the Examiner’s remarks. In the Office Action, it was asserted that claim 1 did not require a tool be inactivated based on the selection of one of the plurality of activities. As amended, claim 1 now recites, “said second interactive tool being activated upon the selection of said one of said plurality of drawing activities, and said second interactive tool being inactivated upon the selection of another activity differing from said one of said plurality of drawing activities.”

Similarly, claim 19 has been amended in clarification to recite “the selected interactive tool being activated upon the selection of the at least one drawing activity, and the selected interactive tool being inactivated upon the selection of another activity from the plurality of activities differing from the at least one drawing activity.” Claim 22 has been amended to recite “the second characteristic being activated upon retrieving the second activity application from

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the removable read-only memory cartridge, and inactivated upon retrieving the first activity application.” Claim 26 now recites “wherein said at least one characteristic is associated with said interactive tool being activated upon the selection of said drawing activity and inactivated upon the selection of another of said plurality of activities differing from said drawing activity.” Claim 31 now recites “the second characteristic being configured for use and operable with the second drawing activity and inoperable with the first drawing activity.” Claim 32 recites “each of the plurality of selectable icons being activated based on a first activity selected from a plurality of selectable activities and inactivated based on a second activity selected from the plurality of selectable activities.” Claim 43 recites “said second interactive tool being activated based on the selection of said one of said plurality of activities and said plurality of characteristics configured to vary based on the selection of said one of said plurality of activities, and said second interactive tool being inactivated based on the selection of another of said plurality of activities.”

Accordingly, Applicant submits that the rejections of independent claims 1, 19, 22, 26, 31, 32 and 43 have been overcome and/or rendered moot by the amendments herein. *Hainey* fails to disclose such a device or method wherein an interactive tool is activated upon the selection of one activity and inactivated upon the selection of another different activity, as now specifically claimed by Applicant. Rather, *Hainey* simply discloses a device including conventional touch screen icons. See, e.g., *Hainey*, page 3, ¶ 35. Nor does the other cited non-patent literature suggest or disclose the present invention as now claimed by Applicant, and therefore fails to remedy the deficiencies of *Hainey*.

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Claims 2-9, 52, and 65 depend from amended independent claim 1. Claims 21 and 54 depend from amended independent claim 19. Claims 23-25, 55, and 63-64 depend from amended independent claim 22. Claims 28 depends from amended independent claim 26. Claims 57-61 depend from amended independent claim 31. Claims 33-41 and 62 depend from amended independent claim 32. Claims 44-51 depend from amended independent claim 43. Accordingly, Applicant submits that these claims likewise define over the prior art of record for at least those reasons noted above.

Conclusion

Applicant respectfully requests reconsideration of the application and allowance of all pending claims in light of the amendments and remarks herein. However, if for any reason the Examiner feels that the application is not now in condition for allowance, the Examiner is encouraged to call the undersigned attorney to discuss any unresolved issues in order to expedite the disposition of the application.

A Request for Continued Examination, a Request for an Extension of Time for two (2) months, and authorization for the requisite fees, are submitted herewith. It is believed that no other fees are due for this submission. Should that determination be incorrect, the Commissioner is hereby authorized to charge payment of any fees required to maintain the pendency of the above-identified application to Deposit Account No. 05-0460.

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